

MINUTES
Crested Butte Town Council
Regular Meeting
Crested Butte Town Hall
Monday, April 3, 2006

Mayor Alan Bernholtz called the meeting to order at 7:03 p.m. Council members present: Ron Chlipala, Margot Levy, Skip Berkshire, Bill Coburn, Leah Williams and Billy Rankin. Staff present: Town Manager Frank Bell, Town Attorney Laura Magner, Town Clerk Eileen Hughes, Town Planner John Hess, Public Works Director Bob Gillie.

Coburn moved and Chlipala seconded to approve the minutes of the March 20, 2006 regular council meeting as submitted. Roll call vote taken with all voting yes. **Motion passed unanimously.**

1. PUBLIC COMMENTS

Crested Butte resident Haden Spencer said she was under the impression the Council would address the claim made by Debbie Sporcich regarding damage from a town water main break. Council indicated they received advice from the Town Attorney and the item was not on the agenda because no action was anticipated. Spencer also asked about a staff report regarding town infrastructure. Bell said staff is preparing a report for the council regarding the town water system and water lines. He said the report would be available in a few weeks.

Crested Butte resident Joan Windsor asked council to re-address the topic of providing doggie hitching posts. She explained the Post Office will no longer allow dogs in the post office. Council directed staff to provide a report on the matter. The report should include potential locations for doggie hitching posts and a staff recommendation.

Council also directed staff to draft a letter to the U.S. Post Office expressing dissatisfaction with the no dog rule and to bring the letter to council for review.

Jeff Westling said he was interested in building bike dirt jumps in town. Bell said it would be best to build the jumps in outlying areas such as the gravel pit or near the frisbee golf course. Council voiced support for construction of dirt jumps and directed staff to talk to Jeff Westerling.

2. STAFF REPORTS

Gillie:

- He's working with the Colorado Department of Transportation and the Town may get \$50,000 to overlay the south section of 6th Street.

Hess:

- The Board of County Commissioners will be discussing an Intergovernmental Agreement IGA with Pitkin County regarding a trail from Crested Butte to Carbondale (West Elk Loop Scenic Byway Trail) at their April 4, 2006 meeting. Bell reported there are ranching interests that may be objecting to the trail.

- The Crested Butte Area Plan (CBAP) subcommittee will be conducting a final review of the draft CBAP and will refer the CBAP to Mt. Crested Butte for review and then bring it back to the Planning Commission.
- Noted his memo dated March 20, 2006 regarding the Conceptual Plan for the Standard Mine and a draft letter from Town Council to the Environmental Protection Agency commenting on the conceptual plan. Council directed Hess to send the letter as written with the addition of a comment expressing concern about the visibility of the access road to the Standard Mine being visible from the West Elk Loop Scenic Byway.

Bell:

- Reported that development proposals are being discussed with the Town regarding property in the Kapushion Annexation (the south ½ of block 1 and most of block 12, north of Gothic Avenue between 5th and 6th streets). Bell explained the proposals are being discussed at the staff level at this time. Bell introduced project proponents Peter Esposito and Andrew Levene.

3. **PUBLIC HEARINGS**

A) Special Events Permit- Artists of the West Elks Arts Festival- July 2, 2006- Along the West and South Sides of the Tennis Courts.

Kate Seeley and Kristen Anderson of the Artists of the West Elks were present. Seeley briefly described the event.

Levy moved and Coburn seconded to approve Special Events Permit for the Artists of the West Elks Arts Festival. Roll call vote taken with all voting yes.

Motion passed unanimously.

B) Special Events Permit-Crested Butte Mountain Heritage Museum-Black and White Ball-July 2, 2006- 4th Street and Elk Ave. (Next to Museum).

Crested Butte Mountain Heritage Museum representative Glo Cunningham was present.

With no discussion, Coburn moved and Chlipala seconded to approve Special Events Permit for Crested Butte Mountain Heritage Museum Black and White Ball. Roll call vote taken with all voting yes. **Motion passed unanimously.**

C) Special Events Liquor License- Crested Butte Mountain Heritage Museum- Black and White Ball-July 2, 2006- 4th Street and Elk Ave (Next to Museum).

Coburn moved and Rankin seconded to approve Special Events Liquor License for Crested Butte Mountain Heritage Museum Black and White Ball. Roll call vote taken with all voting yes. **Motion passed unanimously.**

D) Special Events Permit- Flauschink Parade- April 8, 2006- Elk Avenue.

Town Clerk Eileen Hughes explained the Flauschink Parade committee declined to get insurance coverage. Chamber of Commerce Executive Director Christy Matthews said the Chamber may be able to add the event to the Chamber's insurance policy. Council directed staff to inform the Flauschink committee that they need to get insurance in the future. Additionally, Council directed staff to

inform the Flauschink committee that they should contact the Chamber regarding insurance.

Rankin moved and Levy seconded to approve a Special Events permit for the Flauschink Parade. Roll call vote taken with all voting yes. **Motion passed unanimously.**

E) Appeal by Joseph and Barbara Saya of a Decision by the Board of Zoning and Architectural Review to Grant a Variance to East of Irwin LLC for the West Side Yard Set Back of an Accessory Dwelling to be Located at 214 Maroon Avenue, Block 21 part of Lot 9 and Lots 10-11 in the R-1C zone.

Building Assistant Molly Minneman gave an overview of the East of Irwin LLC project and presented background information on the project as noted in her memo to council dated March 29, 2006. She explained that BOZAR had granted a variance to East of Irwin LLC for the construction of an accessory dwelling in the side yard setback. The appellants, Joe and Barbara Saya felt they had not had adequate opportunity to comment on the variance due to confusion regarding the timing for their comments and staff missteps.

The Sayas expressed their concern about the proximity of the proposed accessory dwelling to their historic garage and that construction of the foundation for the accessory dwelling would damage their garage. Barbara Saya commented they were not objecting to the accessory building but concerned that impacts from construction of the accessory dwelling, at the variance setback, would cause their garage to collapse.

Steve Church of East of Irwin LLC commented that BOZAR had approved the variance for the side yard setback three times. He also noted that he spent considerable time and money installing rocks into gabions for stream bank protection. Additionally, he noted that development of the site is constrained by the stream bank. Church explained that he had worked on the stream bank protection with the understanding that the side yard setback variance had been approved. Church also noted that if the variance for the accessory dwelling was not granted, they would not be able to get a vehicle into the accessory dwelling garage.

Bernholtz opened the public hearing. Audience members Kate Seeley and Kathy Joyce commented. Vickie Church of East of Irwin LLC explained they diligently went through the required public process for their project several times and she said they would appreciate it if Council upheld BOZAR's decision regarding the variance for the accessory dwelling. Bernholtz closed the public hearing.

Council discussed the appeal and asked if the matter could be sent back to BOZAR for review. Town Attorney Laura Magner advised that the matter could not go back to BOZAR, noting that the Town's appeal procedure requires Council to hear the appeal.

In response to a question from Council, Building Official Bob Gillie said in his opinion, construction of the foundation for the accessory dwelling would not affect the foundation of Saya's garage and that most of the snow between the two buildings would be from the Saya's garage. East of Irwin's accessory building will have snow stops.

Several council members expressed concern that the matter could not be sent back to BOZAR. All council members except Williams said they intended to uphold BOZAR's decision.

Rankin moved and Levy seconded to uphold the Board of Zoning and Architectural Review's (BOZAR's) decision to grant a variance to East of Irwin LLC for the west side yard setback of an accessory dwelling to be located at 214 Maroon Avenue, Block 21, part of lot 9 and lots 10-11 in the R-1C zone. The council upheld BOZAR's decision after finding that the variance met the conditions of Section 15-2-16.5.C of the Zoning Ordinance and is supported by the following findings:

1. The particular physical surroundings shape or topographical condition of the subject property cause a particular hardship to the owner, as distinguished from a mere inconvenience, if the ordinance is strictly enforced, as the particular property is constrained by the location of Coal Creek.
2. The conditions upon which the variance is requested would not be applicable, generally, to other properties within the same zoning classification, as the variance property has the particular stream issue.
3. The alleged difficulty or hardship has not been created by any person presently or previously having an interest in the property, in that the hardship stemmed from the location of Coal Creek;
4. The proposal is consistent with the objectives and purposes of the Zoning Ordinance and the applicable zoning district.
5. The proposal is compatible with the neighborhood context and size considering the following:
 - (a) size,
 - (b) density of building,
 - (c) amount of open space
 - (d) scale,
 - (e) maintenance of view corridors, provision of similar or improved landscaping;
6. The variance does not create significant adverse impacts on adjacent property owners including but not limited to the following:
 - (a) snow storage,
 - (b) snow shedding,
 - (c) snow removal,
 - (d) solar access,
 - (e) other significant design features,
 - (f) fire access; and
7. The variance does not create congestion, automotive or pedestrian

safety problems or other traffic hazards.

Roll call vote taken with Bernholtz, Levy, Coburn, Chlipala, Rankin and Berkshire voting “Yes” and Williams voting “No.” **Motion passed 6-1.**

- F) Ordinance No. 8, Series 2006- An Ordinance Authorizing the Issuance of and Sale by the Town of Crested Butte of Industrial Development Revenue Bonds in an Aggregate Principal Amount of Not to Exceed \$4,000,000 for the Purpose of Financing the Acquisition of Certain Property by Crested Butte Academy and Refunding Industrial Development Bonds Issued by the Town in 2004 for the Benefit of Crested Butte Academy.

Bernholtz read the title of the ordinance.

Bell noted that the ordinance was to be accompanied by a supplemental agreement between the Town and Crested Butte Academy (CBA), setting forth the agreement between the Town and the Academy with respect to the bond issue. He explained that the supplemental agreement is being reviewed by the Crested Butte Academy’s bond counsel and after that it needs to be approved by the Board of Directors of the Crested Butte Academy. Bell recommended approving Ordinance 8, Series 2006 as long as CBA officials agree conceptually to the supplemental agreement.

Chairman of the Board of the Crested Butte Academy, Maureen Stenger, explained she did not anticipate any problems with the Board approving the supplemental agreement except for possibly some minor revisions to the language. Dave Clayton, Treasurer of the Board of Directors of Crested Butte Academy, also indicated that CBA has no problems with the supplemental agreement.

Several council members commented regarding the importance of the supplemental agreement and questioned if Ordinance No. 8 could be approved contingent upon approval of the supplemental agreement. CBA officials expressed concern about delaying approval of Ordinance 8, noting that the bond deal could unravel.

Bernholtz opened the public hearing. There were no public comments. Bernholtz closed the public hearing.

Council briefly discussed what action to take on Ordinance 8, 2006 and agreed to approve the ordinance even though the supplemental agreement with CBA is not finalized, given the representations made by the Academy board members in attendance and the previous representations by the Academy.

Coburn moved and Berkshire seconded to approve Ordinance No. 8, Series 2006. Roll call vote taken with all voting yes. **Motion passed unanimously.**

4. NEW BUSINESS

- A) Request From Kate Seeley for Funds for Support of Pooh Fest.

Seeley requested \$300 to place ads about the Pooh Fest (Spring clean-up of dog pooh around town).

Coburn moved and Williams seconded to approve \$300 from the grant fund for Pooh Fest. Roll call vote taken with all voting yes. **Motion passed unanimously.**

B) Consideration of Agreement with Crested Butte Academy Regarding and Supplementing Ordinance No. 8, Series 2006.

Several Crested Butte Academy representatives in the audience thanked the council for their support.

Levy moved and Coburn seconded to approve the supplemental agreement with Crested Butte Academy regarding bond financing contingent upon any changes suggested by town staff. Roll call vote taken with all voting yes. **Motion passed unanimously.**

C) Crested Butte Arts Subcommittee Recommendation Regarding Future Arts Facilities (Direction to Staff).

Levy excused herself from the discussion due to a conflict of interest and left the room at 8:42 p.m.

Council discussed their intent to direct staff to draft a resolution regarding location of future arts facilities. The resolution will use the recommendations from the arts subcommittee as a framework for developing the resolution.

Woody Sherwood, asked council not to include too many design constraints in the resolution.

Council agreed (as discussed in earlier work session) to hold two readings of the resolution to allow more time for public input. Bell explained that a resolution is a policy statement of the council and is not binding.

Berkshire moved and Williams seconded to direct staff to draft a resolution using the arts subcommittee recommendations (contained in memo to the council dated February 17, 2006) as a basis for the resolution.

Levy returned to the council chambers at 8:49 p.m.

D) Discussion of Mountain Express Bus Service-In Town Circulator Bus/Dial – A- Ride Options.

Mt. Express Transit Director Chris Larsen explained that the Mt. Express Board recently discussed circulator bus and dial-a ride options. Larsen highlighted points in his memo to council dated March 29, 2006 regarding the dial a ride and circulator bus options.

Council discussed the topic and expressed a preference for a circulator bus rather than dial- a- ride. Council also voiced support for a circulator bus in the winter rather than the summer, noting that more people walk or ride bikes in the summer and the service would probably not be used as much in the summer, as in the winter.

Council directed Larsen to come back to council with a proposal for a circulator bus for the 2006-2007 ski season. The proposal should include costs and the proposed circulator bus route. Council indicated they would like to see the proposal in early September, 2006.

- E) Ordinance No. 9, Series 2006- An Ordinance Amending the Zoning and Land Use Ordinance Of The Town of Crested Butte Regarding The Minimum Number of Lots in the “C” Commercial District Which May Be Subject To Town Planned Unit Development Regulations.

Levy moved and Rankin seconded to set Ordinance No. 9 for public hearing on April 17, 2006. Later on in the meeting, Levy and Rankin amended the motion to refer Ordinance 9, Series 2006 to the Board of Zoning and Architectural Review.

- F) Ordinance 10, Series 2006- An Ordinance Amending the Zoning and Land Use Ordinance to Add a Definition of the Term “Retail Bakeries.”

Levy moved and Chlipala seconded to set Ordinance 10 for public hearing on April 17. Later on in the meeting, Levy and Chlipala agreed to amend the motion to refer Ordinance 10, Series 2006 to BOZAR.

- G) Ordinance No. 11, Series 2006-An Ordinance Amending the Zoning and Land Use Ordinance to Add Subordinate and Incidental Use Restaurants as a Conditional Use in the “C” Commercial District and to Add a Definition of “Subordinate And Incidental Use.”

Magner briefly explained the difference between ordinances 11 and 12, noting that Ordinance 11 allows restaurants as a subordinate and incidental use, whereas Ordinance 12 allows restaurants as a conditional use but restricts the size of the restaurant.

Council discussed ordinances 11 and 12 and whether or not to limit restaurants to incidental use in the “C” zone. Council also discussed placing a size restriction on restaurants in the “C”zone.

Crested Butte resident and restaurant owner Victor Sheppard urged the council not to allow restaurants in the “C” zone saying it could depress the restaurant business in other areas of town. Additionally, he said the definition of subordinate and incidental use should be further defined. He suggested that subordinate use be defined by the amount of revenue generated from restaurant use compared to the primary use.

Council directed staff to combine the key points of ordinances 11 and 12. The draft ordinance should include a definition of subordinate and incidental use and also include a size limitation on restaurants in the “C” zone. Council asked staff to bring a draft ordinance to the April 17, 2006 meeting for council review, with the intent that council would then refer Ordinance 11, 2006 to BOZAR.

- H) Ordinance No. 12, Series 2006- An Ordinance Amending the Zoning and Land Use Ordinance to Add Restaurants of a Size No Greater Than One Thousand (1,000) Square Feet as Conditional Use in the “C” Commercial District.

Council discussed Ordinance 12 at the same time as Ordinance 11. See discussion above under Ordinance 11. (Ordinance 12 will be combined with Ordinance 11 and reintroduced as Ordinance 11).

- I) Mayor’s report on Colorado Association of Colorado Ski Towns Meeting (CAST). Bernholtz discussed this item earlier in work session.
- J) Schedule Council Mini-Retreat for Off-Season
Bernholtz explained the retreat should be postponed due to the resignation of the Town Manager.

6. **STAFF REPORTS** (Continued)

Bell:

- Noted new council calendar in packets for council to indicate dates when they will be out of town.
- Reported he is working on a list of ongoing items council is working on and plans to include list in next council packet.
- Reported that he will begin his new job as Town Manager in Telluride effective in late May. Explained that council needs to discuss succession planning for a new Town Manager.

6. **LEGAL MATTERS**

Reported that staff is having problems with the unauthorized demolition of historic structures in town and is concerned that the Town’s penalties are not strong enough. Council directed staff to research what other municipalities are doing to deter people from unauthorized demolition of historic structures and to look into initiating harsher penalties for violations. Staff was directed to bring a proposed ordinance to the Council.

7. **COUNCIL REPORTS AND COMMITTEE UPDATES**

Bernholtz:

Reported he delivered (via skis) to the Mayor of Aspen a proclamation regarding the Elk Mountains Grand Traverse (Ski race from Crested Butte to Aspen) and the Mayor of Aspen presented him with a proclamation at the finish line of the Grand Traverse.

Rankin:

Inquired about the status of the Parks and Recreation Director position. Bell gave a brief update on the hiring process and the number of applicants. Reported he has communicated with staff in building department regarding updating the town's energy code and he's hopeful that this summer an ordinance updating the energy code will be ready for council consideration.

Berkshire:

Inquired if there would be any paving in town this summer. Gillie said they may be overlaying the north end of 6th Street depending on funding from the Colorado Department of Transportation. Berkshire asked if there was any chance the Nordic Center parking lot could be paved. Gillie explained paving the Nordic Center lot would be costly and funding would need to be included in the budget. Council agreed to talk about paving the Nordic Center lot during budget discussions in the fall.

8. **EXECUTIVE SESSION**

Levy moved and Rankin seconded to go into Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402 (4) (b). and for discussion of a personnel matter under C.R.S. Section 24-6-402 (2) (f) regarding Frank Bell and **not** involving any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. Roll call vote taken with all voting yes. **Motion passed unanimously.**

Council went into executive session at 9:57 p.m. and returned at 10:50 p.m.

8. **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

Council agreed to schedule discussion of Whetstone Business Park at a special meeting to be held April 10, 2006 at 6 p.m. (prior to work session already scheduled on horizontal zoning), and also to address the Town manager search issues, deadlines, criteria, etc. at that special meeting.

Bernholtz adjourned the meeting at 10:54 p.m. by unanimous consent.

Margaret J. Levy, Mayor Pro-Tem

Eileen Hughes, Town Clerk

